
**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**Illinois Commerce Commission
On Its Own Motion**

**Requirements governing the form and
content of contract summaries for the
2000 neutral fact-finder process under
Section 16-112(c) of the Public Utilities
Act.**

00-0007

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COMMERCE COMMISSION
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NICOR ENERGY, L.L.C.'S INITIAL BRIEF

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I. INTRODUCTION

Nicor Energy, L.L.C. (“Nicor Energy”) supports the use of a market-based mechanism as the method to derive a market value that bears some relationship to reality. Clearly, the use of an administratively determined value has not led to the development of a competitive retail electric commodity market because the values adopted from the process fail to reflect a competitive price for power and energy. In order for the Neutral Fact Finder (“NFF”) process to simulate a reasonable market value for use in the calculation of transition charges (“CTCs”) and the Power Purchase Option (“PPO”), adjustments to previous and pending reporting strategies must be achieved to avoid invalid measures and the perpetuation of previous market values. To alleviate some of the limitations of the NFF process, Nicor Energy proposes the use of historical day-ahead pricing to derive CTC values for use in unbundling contracts reported to the NFF, and urges the Commission to reject unbundling contracts into separate capacity and energy charges. Utilizing these two strategies will assist the NFF in developing more accurate market values, which in turn benefits the development of an effective competitive market.

II. **THE USE OF TARIFFED CTC NUMBERS FOR UNBUNDLING BUNDLED CONTRACTS PERPETUATES CURRENT MARKET VALUE NUMBERS. ACCORDINGLY, HISTORICAL DAY-AHEAD PRICING FOR DELIVERIES INTO COMMONWEALTH EDISON’S SERVICE TERRITORY SHOULD BE USED AS A PROXY TO DERIVE CTC VALUES.**

In reporting retail electric contracts, Section 16-112(c) of the *Electric Service Customer Choice and Rate Relief Law of 1997* (“the Act”) states that delivery service charges (“DSTs”) and transition charges should be deducted from the bundled rate to determine market value. (220 ILCS 5116-1 12(c)) While DSTs are frozen pursuant to

tariffs filed by electric utilities in 1999, utilizing current, tariffed transition charges (“CTCs”) to derive a market value for future years results in a bias to determining market value. (See Nicor Energy Ex. 1 at 3; Ameren Ex. 1 at 9; IP Ex. 1.1 at 3; Staff Ex. 2 at 3.) If reporting entities were to unbundle a bundled contract and subtract year 2000 delivery service charges and year 2000 tariffed CTCs, the resulting 2001 market values may tend to the current market values for the present year. Needless to say, the current NFF market values bear little resemblance to actual market values. (See Ameren Ex. 1 at 4.)

As retail electric suppliers (“RES”) are currently forced to place customers on the utilities’ PPO option, due in large part to the inability to compete with NFF determined Summer On-Peak market values, utilizing the tariffed CTC values for 2000 will result in a déjà vu for RES and customers on a forward-looking basis. This perpetuation of 2000 values reduces the competitiveness of the Illinois electricity market, as the PPO would remain the dominant option for summer power and energy values.

Illinois Power Witness Hastings agrees that the use of tariffed CTC values results in a bias to the NFF determination of market value:

I am concerned where the unbundling calculation derives the market value as the residual amount remaining after subtracting Delivery Service Revenues (including Transition Charges) from the bundled contract price. In short, such a process creates an unavoidable bias to the NFF determination of market value utilized in the unbundling calculation itself, thus perpetuating the prior NFF value because the current determination of the NFF market value would be dependent upon the prior year’s determination. (IP Ex. 1.1 at 3.)

Ameren Witness Miller also agrees and states:

Previous NFF results determined the ‘market price’ embedded in the current PPO. The results of the NFF process are used to define future transition cost recovery (TC values). The NFF reporting process then assumes that current TC values apply to all years of a reported contract. The result is that the NFF-determined market value for one year will

greatly influence the determination in the next year, and so on. (Ameren Ex. 1.0 at 9.)

Additionally, according to Section D(3) of the Instructions: “As required by Section 16-112(c), reporting entities are to deduct delivery service charges (including transition charges as defined and set forth in applicable tariffs that are in effect at the time the reporting entity’s data is submitted). . .” (Staff Ex. 1.0 Sch. B.) However, Section 16-112(c) does not specify the deduction of transition charges as set forth in applicable tariffs (effectively year 2000 CTCs). According to § 16-112(c):

...In reporting to the neutral fact-finder the price of power and energy sold under bundled service contracts, electric utilities and alternative retail electric suppliers shall deduct from the contract price the charges for delivery services, including transition charges, applicable to delivery services customers in a utility’s service area, and charges for services, if any, other than the provision of power and energy or delivery services. The Commission may adopt orders setting forth requirements governing the form and content of such summaries. (220 ILCS 5/16-112(c))

The Act specifies deducting transition charges that are applicable to delivery service customers in a utility’s service area, but does not specify utilizing the CTCs set forth in utility tariffs. Deducting “tariffed” transition charges along with tariffed delivery service charges will result in a perpetuation of market values similar to previous years. (Nicor Energy Ex. 1 at 3.) Staff Witness Bishop appropriately identified this circularity issue in Direct Testimony. When asked why the use of tariffed transition charges as established by the Commission was an unresolved issue, Staff Witness Bishop responded:

The Commission did establish transition charges for 2000 in the Delivery Services Tariff cases. The 2000 transition charges are based on the market values calculated by the 1999 Neutral Fact-Finder. However, the contracts to be reported to the 2000 Neutral Fact-Finder are for deliveries of power and energy on or after January 1, 2001. One of the primary purposes of the market values that will be calculated by the 2000 Neutral Fact-Finder is for use in calculating the transition charges for 2001. The formula for calculating transition charges is set forth in Section 16-102 of the PUA.

The components of the calculation are base revenues, delivery service revenues, market value and a mitigation factor. The requirements of Sections 16-112(c) and 16-102 create a circular calculation that can not be solved. (Staff Ex. 1.0 at 7-8.)

Mr. Bishop then continues to state that in order to accurately calculate transition charges for 2001, the market value for 2001 must be known, and if reporting entities had access to a more accurate, verifiable proxy for a 2001 market value, the 2000 NFF process would not be necessary. (*Id.* at 8-9.)

To alleviate Mr. Bishop's concerns and as an alternative to using year 2000 tariffed CTC values, Nicor Energy submits that the use of 1999 day-ahead pricing for deliveries into Commonwealth Edison's system is that reasonable proxy for market value, and an appropriate CTC from these objective values can be utilized to construct a more accurate market value for 2001. (See *generally*, Nicor Energy Ex. 1,2.)

While deducting current, tariffed delivery service charges is logical due to the certainty of that those values will remain constant for the foreseeable future, transition charges should vary based on the market for power and energy. Instead of deducting the tariffed transition charges from bundled contracts, day-ahead pricing should be used to capture an appropriate CTC value, and this value should then be deducted to result in a more accurate reporting to the NFF. The use of day-ahead pricing in an unbundling structure provides a better proxy for determining CTC values. (Nicor Energy Ex. 1 at 5.)

The 1999 day-ahead pricing numbers provide a market-driven pricing mechanism that will not lead to a perpetuation of year 2000 market values. (*Id.*) While this data is historic in nature, it does value the power and energy in a way where a reasonable proxy for CTC's could be used to properly unbundle transition charges. Additionally, the use of historical day-ahead pricing is an objective measure of market value in order to calculate

CTCs. (See Staff Witness Larson Tr. at 52-53.) Also, the day-ahead transactions likely represent a more robust picture of the energy market than the relatively few contracts considered by the NFF for 2000. (Nicor Energy Ex. 1 at 5.)

The goal of the NFF process is to derive appropriate market values for the calendar year 2001. Constructing an appropriate mechanism for determining market value through the use of day-ahead pricing to determine CTC's would further this goal.

III. IN REPORTING CONTRACTS EXPRESSED IN TERMS OF \$/KWH OR \$/MWH, THE REPORTING ENTITY SHOULD PROVIDE IDENTICAL PRICING PARAMETERS TO THE NFF INSTEAD OF ARTIFICIALLY SPLITTING CAPACITY AND ENERGY PRICES.

In wholesale contracts expressed in \$/kWh or \$/mWh terms, capacity and energy components should not be reported to the NFF as separate values. Instead, after properly unbundling the applicable contract, a single \$/kWh or \$/mWh price should be submitted to the NFF by the reporting entity. (Nicor Energy Ex. 1 at 5.)

In negotiating and forming wholesale and retail contracts, separating capacity and energy components are not formally contemplated by the parties. Instead, the contract price is an "all-in" deal, embracing energy and power costs to the mutual satisfaction of the buyer and seller. According to Sections D (4) and E of the *Instructions for Completing the Contract Summary Form and Worksheets* ("Instructions") (ICC Staff Ex. 1.0 Sch. B.), reporting entities are required to separate energy and capacity values for reporting contracts to the NFF. However, no accurate methodology for determining energy and capacity values on an hourly basis is provided in the instructions, other than the subjective description reporting entities would provide the NFF. (See Nicor Energy Ex. 1 at 5; ComEd Ex. 2 at 5.)

Conducting an arbitrary and administratively burdensome calculation of capacity and energy values does not assist the NFF in determining appropriate values. As ComEd Witness Feerick stated: “In addition, the intermediate step of converting the MWH price into capacity and energy prices is unnecessary to arrive at the \$/MWH values which are ultimately being calculated for the summer and non-summer peak and off-peak periods.” (ComEd Ex. 2 at 5.) Furthermore, it is unclear that either the seller or buyer in the wholesale transaction contemplate the separation of energy and capacity values when the price for the product is expressed in terms of \$/mWh. (Nicor Energy Ex. 1 at 5.)

Therefore, in cases where a contract is expressed in terms of \$/kWh or \$/mWh, the reporting entity should provide the NFF with identical pricing parameters by completing the appropriate form and expressing these contracts with the same terms contained in the applicable contract. For reporting wholesale contracts with a price expressed in \$/mWh, the fixed mWh price should be reported for all applicable hours. (Nicor Energy Ex. 1 at 5-6.) The submittal of additional information attached to the draft instructions will assist the NFF to understand the price in the contract, and reflect discrepancies that may exist from entering the fixed price 8760 times in the reporting form. (ComEd Witness Feerick, Tr. at 70.)

IV. CONCLUSION


For the reasons set forth in this Initial Brief, Nicor Energy, L.L.C. respectfully requests that the Commission enter an Order in this docket consistent with the following:

1. Adopt Staff Witness Bishop’s Forms and Instructions with appropriate modifications contained in Nicor Energy, L.L.C.’s Exhibits 1 and 2;

2. Enter a notice of rulemaking in conformance with the arguments presented.

Respectfully submitted,

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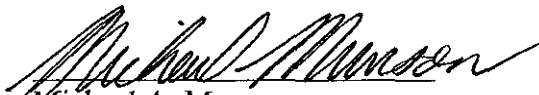
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CERTIFICATE OF SERVICE

I, Michael A. Munson, hereby certify that a copy of Nicor Energy LLC's Initial Brief filed in the above-captioned proceeding was served on the person or persons on the attached service list by depositing same in the United States Mail depository with proper postage prepaid thereon, by Federal Express, by facsimile, by hand-delivery or by electronic mail on March 16, 2000.



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